

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13061 of Washington Circle Theatre Corporation, et al., pursuant to Paragraph 8207.11 and Sub-section 8207.2 of the Zoning Regulations, for a variance from the lot occupancy requirements (Sub-section 3303.1) and for a special exception under Sub-section 3308.2 to permit a roof structure not meeting the normal setback requirements in order to construct an apartment house addition at the premises 2301 Washington Circle, N.W., (Square 38, Lots 23,25,801,806,807 and 814).

HEARING DATE: August 29, 1979  
DECISION DATE: September 19, 1979

FINDINGS OF FACT:

1. The subject property is located on the northwest quadrant of the Washington Circle intersection of Pennsylvania Avenue and 23rd Street, N.W. It is in an R-5-D District.
2. The subject site is 16,900 square feet in area and is improved with six row dwellings which front on Washington Circle and the Lewis Hotel Building which is located at the corner of 23rd Street and the Washington Circle.
3. To the north of the subject site is a six foot wide alley followed by the rear and side yards of row dwellings. A 17.5 foot wide alley intersects with L Street, a ninety foot right-of-way, traveling one-way east to the northwest of the site. There is a special unit Police Station across L Street. To the east of the site is 23rd Street, a 100 foot right-of-way, followed by the Washington Circle Hotel. To the south of the site across Pennsylvania Avenue and K Street is the George Washington University Clinic. To the west of the site is Washington Circle followed by George Washington Hospital.
4. The applicant, Circle Associates, is the record owner of Lot 25, 2315 Pennsylvania Avenue, N.W., and contract purchaser of Lots 23,24,801,806,807 and 814 in Square 38.
5. The applicant has been assembling the aforescribed parcel since October 1978 for the purpose of constructing a new apartment building permitted as a matter of right under the Zoning Regulations and Landmark Regulations prior to May 31, 1979.

6. The applicant originally intended to demolish the existing buildings and thereafter erect a ninety foot, 6.0 F.A.R. apartment building.

7. Circle Associates executed purchase contracts for premises 2301, 2305, 2307 and 2309 Washington Circle on December 21, 1978 and January 24, 1979. On January 16, 1979 a razing (demolition) permit application was filed for premises 2301 Washington Circle, N.W. and on January 23, 1979 razing permit applications were filed for premises 2305, 2307 and 2309 Washington Circle, N.W.

8. Settlement on the above contract properties was to occur on July 2, 1979. However, as a result of the filing of an application to declare Square 38 an historic landmark, the acquisition lender refused to fund and informed Circle Associates of that fact.

9. The "Historic Landmark and Historic District Protection Act of 1978", D.C. Law 2-144, went into effect on March 2, 1979. Section 3(f) of the Act provides that for the purposes of the Act, any property for which an application for historic landmark has been filed will be accorded the full protection of a landmark prior to any determination of landmark status.

10. On August 16, 1979 the Joint Committee on Landmarks of the National Capital designated the subject lots as a Historic Landmark and placed it in Category III in the Inventory of Historic Sites.

11. As a result of the impact of D.C. Law 2-144 in this case, Circle Associates initiated litigation entitled Circle Associates, et al. v. District of Columbia, et al., C.A. No. 8430-79.

12. After four days of trial, the parties under the guidance of the court, reached an agreement to settle the Superior Court litigation.

13. Pursuant to paragraph 3 of the Settlement Agreement, Circle Associates was to appear before the Joint Committee for a preliminary design review under Rule 2.5(e) of the Rules of Procedure pursuant to D.C. Law 2-144 which binds the Joint Committee to such design under Section 9 of the D.C. Law 2-144. Preliminary design approval of the plans presently before the Board was given for the floor plan at ground level and the location of the penthouse by the Joint Committee at its meeting held August 23, 1979.

14. Counsel for the Joint Committee submitted a letter dated September 4, 1979 to the Secretary of the Board stating that in granting preliminary approval at its August 23 meeting, the Joint Committee required that:

- (a) the portion of the new construction along the balance of the Washington Circle frontage be of similar height as the buildings to be preserved;
- (b) the general massing of the higher building be placed behind the low structure fronting on Washington Circle; and
- (c) the roof structure be set back from the roof line fronting on Washington Circle.

15. At the August 23, 1979 meeting, the Joint Committee approved the issuance of demolition permits for premises 2301 Washington Circle (HPA No. 79-376), 2305 Washington Circle (HPA No. 79-377), 2307 Washington Circle (HPA No. 79-378) and 2309 Washington Circle (HPO No. 79-379) upon (1) the granting by the D.C. Board of Zoning Adjustment of a variance for the lot coverage and a special exception for the roof structure and (2) final review by the Joint Committee of the general massing and fenestration.

16. The Assistant Counsel for the Joint Committee submitted a letter dated September 7, 1979 to the Secretary of the Board stating in part that: "At its meeting on September 7, 1979, the Joint Committee again reviewed the design for the proposed new construction which was identical to that submitted on August 23rd with respect to the massing but differed in its fenestration. The Committee approved the design of the building, as submitted, including the general massing and fenestration, excepting only details of the fenestration and color and texture of building materials to be used."

17. The architect for the applicant testified and the Board so finds that the building model and plans for new construction presented to the Board at its August 29 public hearing are identical to those submitted to the Joint Committee at its August 23 meeting.

18. The applicant now proposes to build a 102 unit, ten story apartment house on the subject site. The plans include underground parking for ninety-five cars and the preservation of three existing row dwellings on the site.

19. The subject development project conforms with the ninety foot maximum height, FAR (6.0), parking, loading berth, rear yard, penthouse FAR (3.7), and closed court requirements of the Zoning Regulations.

20. The Zoning Regulations allow a maximum lot occupancy of seventy-five percent in the R-5-D District. The subject site consists of 16,920 square feet of land area. The applicant proposes a lot coverage of 14,835 square feet, 2,145 square feet in excess of that allowed. A variance is thus requested.

21. Sub-section 3308.2 of the Zoning Regulations requires that a penthouse be setback from all lot lines a distance equal to the height when the elevation of the penthouse is greater than that authorized in the R-5-D District. The subject penthouse elevation is fifteen feet higher than the main structure's roof line, and is located flush with the northwest lot line. A special exception is requested.

22. The penthouse structure cannot be set back from the north property line in accordance with Paragraph 3201.26 because under the terms of the Settlement Agreement and at the direction of the Joint Committee on Landmarks, the bulk of the building has been pushed to the rear of the site as far as possible from the existing historic townhouses that are to be preserved.

23. The site as existing, excluding the non-conforming Lewis Hotel School, which is not a viable structure for residential use, is developed with only 17,840 square feet of gross floor area, only a small percentage of its permitted F.A.R. Under residential development such as an apartment use, for which the applicant has already filed plans, the permitted F.A.R. is approximately 102,000 square feet. The present residential development is only seventeen percent of the permitted total. The applicant intends to have a development of approximately 100,500 square feet of residential apartment space which could have been designed without the necessity of a lot occupancy variance had the applicant not been required to preserve premises 2311 Washington Circle and 2313 and 2315 Pennsylvania Avenue and construct low-rise structures fronting on Washington Circle by the Joint Committee.

24. The designation of the subject structures as part of an historic landmark, under the conditional approval granted by the Joint Committee, precludes matter of right development under the Zoning Regulations in this case. The plan as conditionally approved by the Joint Committee on Landmarks, which envisions the retention of three of the landmark townhouse structures and the erection of a low-rise townhouse facade along Washington Circle, greatly restricts the location of the main building bulk for the project as the lost FAR for this part of the site must be made up elsewhere.

25. The architect of the project testified and the Board so finds that the proposed building addition may be erected along the lot line abutting the alley as a matter of right, and that the percentage of the lot occupancy variance is not affected by this placement of the structure.

26. The Office of Planning and Development by report dated August 27, 1979 recommended that the variance from the lot occupancy requirement be granted but that the special exception from the penthouse setback requirement be denied. The OPD stated that in order to keep the low facade of the recently designated landmark buildings on the street frontage, achieve the maximum FAR, preserve three of the existing structures and still develop an economically and functionally feasible residential development, the lot coverage variance is necessary. The applicant has indicated that the cost and complexity of preserving the existing historic structures imposes a practical difficulty which under normal circumstances would not arise in the construction of a residential development in full compliance with the R-5-D District. The OPD reported that the twelve percent variance relief will not cause substantial detriment to the public good. The OPD further reported that the applicant's plan should be amended to bring the siting of the penthouse structure into compliance with the regulations. As proposed, the penthouse complies with the fifteen foot setback from the lot line on all sides except one. The side on which the penthouse is out of compliance is designed as a ninety foot wall on the lot line, straight up without terraces or structural deviations of any kind. OPD feels that the wall's height, although permitted as a matter of right, will be threatening enough to the property owners whose rear yards face the site without increasing this height of fifteen feet. Since the light and air of the surrounding properties will already be affected by the general mass and height of the main building, the further impact of the penthouse should be minimized. The Board concurs only as to the variance requested.

27. Advisory Neighborhood Commission 2A, through its resolution of August 7, 1979 and its signing of the aforementioned Settlement Agreement, was in favor of the application on the grounds that the proposed construction represented a fair accommodation of the interests of the historic preservation and creative new development.

28. Owners of property within the immediate neighborhood opposed the application on the grounds that the location of the building along the lot line abutting the alley and the location of the loading dock thereat would cause traffic problems for the other property owners adjoining the subject property. The opposition further stated that the location of the windows along the western frontage of the subject building would disturb the owners of the properties along Pennsylvania Avenue and that none of the buildings in the subject square should be demolished. In

response to the issues raised by the opposition, the Board finds that the proposed location of windows will not adversely affect abutting properties. Demolition of buildings in the square is not a proper issue before the Board in this proceeding. The building may be located along the lot line abutting the alley as a matter of right under the Zoning Regulations. The location of the garage entrance along the alley frontage is also permitted as a matter of right. The proposed building addition will not adversely affect neighboring residential properties to the west.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the applicant is seeking a special and a variance. As to the special exception the Board concludes that the applicant has complied with Sub-section 3308.2 of the Zoning Regulations in that compliance with the set back requirements of roof structures in this case would be impracticable because of the directive of the Joint Committee on Landmarks and the Settlement Agreement that the penthouse be setback along the lot line abutting the alley. The subject site is presently improved with six townhouse structures and the Lewis Hotel School, all of which are designated as part of the Square 38 Landmark. The attempt to preserve three of the townhouse structures while erecting new construction compatible with existing buildings and integrating a highrise structure at the rear of the site imposes a unique situation with respect to the development of the subject site and dictates design, lot occupancy and location of the proposed building addition.

In addition the Board further concludes that the special exception requested will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with said Regulations and Maps.

As to the variance the Board concludes that this is an area variance the granting of which requires a showing of a practical difficulty upon the owner of the property that stems from the property itself. The applicant's "practical difficulty" stems from the existence of historic structures which contribute only a small percentage of F.A.R. to the project while taking up a disproportionate amount of lot occupancy and the erection of proposed new construction which is low-rise along Washington Circle in accordance with the directive of the Joint Committee on Landmarks "Settlement Agreement", which has the same impact. Furthermore, there is added cost and complexity of development which preservation of the existing structures imposes in an attempt to integrate them into the building addition. The Board concludes that these elements constitute the "practical difficulty" imposed on the applicant herein.

The Board further concludes that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zoning plan. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the condition that the building shall be constructed in accordance with the plans submitted to the Board, marked As Exhibit No. 15 of the record, provided that the details of the fenestration and the color and texture of building materials to be used shall be as approved by the Joint Committee on Landmarks.

VOTE AS TO THE SPECIAL EXCEPTION: 3-1 (William F. McIntosh, John G. Parsons and Chloethiel Woodard Smith to grant, Leonard L. McCants opposed, Charles R. Norris abstained)

VOTE AS TO THE LOT OCCUPANCY VARIANCE: 4-0 (William F. McIntosh, John G. Parsons, Chloethiel Woodard Smith and Leonard L. McCants, Charles R. Norris abstained)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 8 NOV 1979

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD DHSLL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.